S.B. CIVIL REVISION PETITION NO.244/2007

Smt. Bhagwati and others.

vs.

Laxman Giri and others.

Date : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Sajjan Singh, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners/defendants are aggrieved by the order dated 7.8.2007 passed by the court below dismissing the petitioner's application filed under Order 7 Rule 11 CPC.

Brief facts of the case are that the plaintiffs/respondents filed a suit for declaration and injunction alleging that on 13.4.1951, the property in dispute was purchased by Shanker Giri, Laxman Giri and Inder Giri @ Chand Giri, therefore, all three were joint owners of the property in dispute. Shanker Giri died on 12.7.1990. Shanker Giri executed a Will on

22.11.1988. By this Will, Shanker Giri gave certain portion of the property in dispute to the plaintiff no.2 and certain portion of the property to defendant no.1. The plaintiffs pleaded that said arrangement was accepted by all the parties. The plaintiffs in para no.7 pleaded that even without the Will, there were three joint owners of the property in dispute and, therefore, they have share in the property. The plaintiffs in relief claimed that it may be declared that the plaintiffs are owners of the property in dispute by virtue of the Will and the sale deeds referred above.

The defendants submitted an application under Order 7 Rule 11 CPC with the plea that two plaintiffs filed the suit by taking absolutely contradictory pleas and one plea destroys the other's case and, therefore, the suit was having the defect of mis-joinder of causes of action. Therefore, the defendants submitted the application at the earliest possible opportunity as required by Order 2 Rule 7 CPC. Therefore, the suit as per the plaint allegations was liable to be dismissed because of mis-joinder of the causes of action.

The trial court rejected the application filed under Order 7 Rule 11 CPC by the impugned order

dated 7.8.2007.

According to learned counsel for the petitioners, the trial court committed serious error of law, therefore, the order under challenge is absolutely illegal.

I considered the submissions of learned counsel for the petitioners and perused the facts of the case.

It is clear from the facts pleaded in the plaint that the plaintiffs' contention is that the suit property was purchased on 13.4.1951 by three purchasers - Shanker Giri, Laxman Giri and Inder Giri. Shanker Giri died and he executed Will in favour of the plaintiff no.2 and defendant no.1. The plaintiffs further pleaded that the arrangement made by the Will of Shanker Giri dated 22.11.1988 was accepted by all the parties. This is one of the plea and in the alternate, it has been pleaded that otherwise also, the plaintiffs have share in the property. Therefore, it appears that the plea taken by the plaintiffs is in the alternative and in case, the will is found legal and valid and the arrangement made by the parties as per the Will dated 22.11.1988, then the

plaintiffs will be entitled to relief accordingly and in case, the Will is not found validly executed nor arrangement is accepted by the court below, then the relief will be different but it cannot be said that acceptance of arrangement pleaded by the plaintiffs cannot be proved by them and it amounts to mis-joinder of causes of action.

The other contention of learned counsel for the petitioners was that the suit has not been properly valued as the suit should have been valued for whole of the property and the plaintiffs have valued as per their share in the property. The petitioners said objection was rejected by the trial court holding that the plaintiffs were required to pay the court fees as per their share in the property.

In view of the above discussion, I do not find any material irregularity or illegality in the impugned order. Accordingly, this revision petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya